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IN THE SUPREME COURT OF THE STATE OF ALASKA

Lt. Governor Kevin Meyer, in his official  
capacity, Gail Fenumiai, in her official  
capacity as Director of the Alaska Division  
of Elections, and the State of Alaska  
Division of Elections,

Supreme Court No. S-18442

Petitioners,

v.

Robert Corbisier, Executive Director of  
Alaska State Commission for Human Rights,  
*ex rel.* B.L.,

Respondent.

Trial Court Case No: 3AN-22-06525 CI

**NOTICE OF FILING**

Intervenor, Alaskans for Nick Begich, by and through counsel of record, Holmes  
Weddle & Barcott, P.C., hereby provides notice of filing of the following:

1. Motion to Intervene filed with the superior court.
2. Proof of filing with the superior court.
3. Brief of Intervenor Re: Emergency Petition for Review.

Undersigned counsel contacted both parties on June 10, 2022 to advise that  
Alaskans for Nick Begich considered intervening in the instant action given the  
implications of the superior court order. While under normal circumstances, there would  
be proper formalities to ensure intervention was ordered prior to filing, given the emergent

timeline of the above-captioned action, these items are filed with the Court to meet with the same.

HOLMES WEDDLE & BARCOTT, P.C.  
Attorneys for Alaskans for Nick Begich



By: \_\_\_\_\_

Stacey C. Stone  
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**CERTIFICATE OF SERVICE**

The undersigned certifies that on this  
11<sup>th</sup> day of June, 2022, a true and  
correct copy of the foregoing document,  
printed in Times New Roman typeface  
13 point, was served via Email to:

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Holmes Weddle & Barcott, P.C.

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**Subject:** For Filing in Case No. 3AN-22-06525CI--Alaskans for Nick Begich Motion to Intervene  
**Date:** Saturday, June 11, 2022 7:56:14 AM  
**Attachments:** [Begich Motion to Intervene.pdf](#)  
[proposed order.pdf](#)

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Please see the attached motion to intervene and proposed order.

Sincerely,  
Richard R. Moses

**Richard R. Moses**

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IN THE SUPERIOR COURT FOR THE STATE OF ALASKA  
THIRD JUDICIAL DISTRICT AT ANCHORAGE

ROBERT CORBISIER, Executive Director )  
of ALASKA STATE COMMISSION FOR )  
HUMAN RIGHTS *ex rel.* B.L., )  
 )  
Plaintiff, )

v. )

KEVIN MEYER, in his official capacity as )  
Lieutenant Governor of the State of Alaska; )  
GAIL FENUMIAI, in her official capacity )  
As the Director of the Alaska Division of )  
Elections, and the STATE OF ALASKA, )  
DIVISION OF ELECTIONS, )  
 )  
Defendants. )

Case No. 3AN-22-06525CI

**MOTION TO INTERVENE**

Alaskans for Nick Begich (“Begich”), by and through Holmes Weddle & Barcott,  
P.C., hereby moves for an order to intervene in the above-captioned action under Alaska R.  
Civ. P. 24 as a matter of right.

Begich is a candidate in the special election to replace former Congressman Don Young. The by-mail primary election is due to end on June 11, 2022 and to be certified on or about June 25, 2022. Accordingly, Begich seeks an order from the court granting his motion to intervene in the above-captioned action.

Alaskan courts apply a four part test to determine whether a party can intervene in an action. It is as follows,

(1) the motion must be timely; (2) the applicant must show an interest in the subject matter of the action; (3) the applicant must show that this interest may be impaired as a consequence of the action; and (4) the applicant must show that the interest is not adequately represented by an existing party.<sup>1</sup>

Begich's motion to intervene should be granted because he meets all four factors. First, the above-captioned matter was only filed on June 8, 2022. It was less than forty-eight hours later when the court granted the motion for preliminary injunction, delaying the certification of the aforementioned primary election, in this case on the evening of June 10, 2022. Given the implications of such order, Begich has taken immediate action to participate, and therefore, this motion is timely.

Second, as a candidate in the special election at issue in this litigation, Begich is an aggrieved party and certainly has an interest in the subject matter of this litigation given that it concerns the certification of the primary election in which he is a candidate.

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<sup>1</sup> *Anchorage Baptist Temple v. Coonrod*, 166 P.3d 29, 33 (Alaska 2007).

Third, as a candidate in the special election at issue in this litigation, Begich's interest in the outcome of said special election will certainly be affected by the outcome of this action. Currently, the primary for the special congressional election is set for June 11, 2022—today—and initial, unofficial results are set to be released this evening.<sup>2</sup> The Superior Court's order granting a preliminary injunction dated June 10, 2022 will almost certainly extend the deadline to submit a ballot beyond the currently set deadline of June 11, 2022. Accordingly, Begich has a very acute interest in the outcome of this litigation because there is substantial risk that additional individual voters will be allowed to vote after they have been made aware of the results of the vast majority of votes cast, which could affect the outcome of the election.<sup>3</sup>

Finally, Begich's interest could not possibly be represented by an existing party to this litigation. First, the Defendants' loyalties lie with the voting public, not the candidates. And second, there is no conceivable way that the Plaintiff could adequately represent Begich because the Plaintiff is seeking the very remedy in this action that Begich asserts will prejudice his campaign for Congress.

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<sup>2</sup> See <https://elections.alaska.gov/specialelections.php>.

<sup>3</sup> As of the time of writing, the Division of Elections has received at least 126,292 ballots. See [https://elections.alaska.gov/doc/info/Combined%20Ballot%20Count%20Report\\_6.10.2022.pdf](https://elections.alaska.gov/doc/info/Combined%20Ballot%20Count%20Report_6.10.2022.pdf). It should also be noted that anyone, visually impaired or not, will be afforded an opportunity to consider the initial results when they vote, which is an opportunity that was not afforded to the at least 126,292 Alaskans who have already voted. Apart from prejudicing each of the forty-eight candidates on the ballot, the preliminary injunction prejudices at least 126,292 Alaskans who were not afforded the opportunity to consider the election results prior to voting.

Given that Begich has met the four-part test for intervenor status under Alaska R. Civ.

P. 24, the Court should grant Begich's motion to intervene.

DATED this 12<sup>th</sup> day of June, 2022 at Anchorage, Alaska.

HOLMES WEDDLE & BARCOTT, PC  
Attorneys for Intervenor—Alaskans for Nick  
Begich

By: /s/ Stacey C. Stone

Stacey C. Stone

Alaska Bar No. 1005030

Richard R. Moses

Alaska Bar No. 1311096



**CERTIFICATE OF SERVICE**

The undersigned certifies that on this  
11<sup>th</sup> day of June, 2022, a true and  
correct copy of the foregoing document,  
was served via Email to:

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/s/ Richard R. Moses

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Attorneys for Intervenor—Alaskans for Nick Begich

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA  
THIRD JUDICIAL DISTRICT AT ANCHORAGE

ROBERT CORBISIER, Executive Director )  
of ALASKA STATE COMMISSION FOR )  
HUMAN RIGHTS *ex rel.* B.L., )  
Plaintiff, )

v. )

KEVIN MEYER, in his official capacity as )  
Lieutenant Governor of the State of Alaska; )  
GAIL FENUMIAI, in her official capacity )  
As the Director of the Alaska Division of )  
Elections, and the STATE OF ALASKA, )  
DIVISION OF ELECTIONS, )  
Defendants. )

Case No. 3AN-22-06525CI

**[proposed] ORDER GRANTING MOTION TO INTERVENE**

Alaskans for Nick Begich has met its burden under Alaska R. Civ. P. 24; accordingly,  
Alaskans for Nick Begich is hereby granted Intervenor status in this litigation. IT IS SO  
ORDERED. Further, each party shall serve all pleadings on counsel for Intervenor Alaskans  
for Nick Begich at the email addresses listed above.

Dated \_\_\_\_\_ at Anchorage, Alaska.

\_\_\_\_\_  
Una S. Gandbhir  
Superior Court Judge

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IN THE SUPREME COURT OF THE STATE OF ALASKA

Lt. Governor Kevin Meyer, in his official  
capacity, Gail Fenumiai, in her official  
capacity as Director of the Alaska Division  
of Elections, and the State of Alaska  
Division of Elections,

Supreme Court No. S-18442

Petitioners,

v.

Robert Corbisier, Executive Director of  
Alaska State Commission for Human Rights,  
*ex rel.* B.L.,

Respondent.

Trial Court Case No: 3AN-22-06525 CI

**BRIEF OF INTERVENOR RE: EMERGENCY PETITION FOR REVIEW**

Intervenor, Alaskans for Nick Begich, by and through counsel of record, Holmes  
Weddle & Barcott, P.C., hereby files this Brief of Intervenor Re: Emergency Petition for  
Review.<sup>1</sup>

**I. Statement of Facts**

<sup>1</sup> Intervenor has filed a Motion to Intervene in the trial court which is pending. However, given that Intervenor is an aggrieved party, coupled with the emergent nature of this proceeding and the implications of any determination, Intervenor hereby files the instant brief in order to meet with the Court's emergent timeline.

On March 23, 2022, Governor Dunleavy declared a vacancy in the Office of the United States Representative and called for a special election.<sup>2</sup> Therein, Governor Dunleavy noted that Congressman Don Young died on March 18, 2022 resulting in a vacancy in the United States House of Representatives that must be filled by an election.<sup>3</sup> Governor Dunleavy declared that a special primary election be held on June 11, 2022.<sup>4</sup>

On March 22, 2022, the day prior to the Governor's declaration, the Division of Elections indicated that given the speed of the upcoming June 11 primary, the election would be held by mail.<sup>5</sup> This meant that the Division mailed a ballot to every registered voter in order to participate in the June 11 primary.<sup>6</sup> In addition, mail was selected given the uncertainties resulting from the 2021 Redistricting.<sup>7</sup> It was noted that due to the mail in voting, while some in person voting would be an option, most polling places would be closed.<sup>8</sup>

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<sup>2</sup> <https://gov.alaska.gov/newsroom/2022/03/23/declaring-vacancy-in-the-office-of-united-states-representative-and-calling-for-a-special-election/> (last accessed June 11, 2022).

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> <https://www.ktoo.org/2022/03/22/alaska-special-election-to-fill-don-young-house-seat/> (last accessed June 11, 2022).

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

Nick Begich is a candidate in the special election.<sup>9</sup> Alaskans for Nick Begich is the registered candidate's committee.<sup>10</sup> Alaskans for Nick Begich is an interested and aggrieved party given the June 10, 2022 order issued by the superior court.

## **II. Statement of the Question Presented for Review**

Whether the superior court erred in granting a temporary restraining order and preliminary injunction enjoining the State of Alaska Division of Elections from certifying the results of the 2022 Special Primary Election.

## **III. Discussion of the Reasons for Review**

Pursuant to Alaska R. App. P. 402, review of the superior court order is necessary, as postponement of review will result in injustice. Election integrity is of utmost public concern. Any delay or confusion in the election process breeds distrust within the electorate. Therefore, as a matter of public policy, it is of great import for any election uncertainty or confusion to be decided without delay in order to maintain the public trust and confidence. Furthermore, because of the underlying facts at issue and the nature of the question of law presented to this Court, immediate review will materially advance and ultimately terminate further litigation.

## **IV. Discussion of the Reasons the Decision Below is Erroneous**

In the underlying matter, plaintiff failed to meet its burden. As an initial matter, plaintiff was required to demonstrate that the subject parties were denied meaningful access

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<sup>9</sup> <https://www.elections.alaska.gov/Core/candidatelistspecprim.php> (last accessed June 11, 2022).

<sup>10</sup> <https://www.fec.gov/data/committee/C00792341/?tab=filings> (last accessed June 11, 2022).

to the service, program or activity of voting. However, the inquiry does not end there. Once that burden is met, the moving party is required to demonstrate that reasonable modifications are available to avoid discrimination on the basis of the disability.<sup>11</sup> If the entity from whom such modifications are sought can demonstrate that the modifications would fundamentally alter the nature of the service, program or activity of voting, such accommodation is not reasonable and not required.<sup>12</sup> This is particularly true where any accommodation results in undue financial and administrative burdens.<sup>13</sup>

The primary issue at hand in the underlying matter, is that the plaintiff never proposed any action. The plaintiff merely requested the court enjoin certification of the special primary election without providing any vehicle to remedy the issue. This particularly where it would be fundamentally unfair to allow one group of disabled individuals to vote beyond the declared election day, especially after results have been distributed to the public. Ultimately, the superior court had no way to discern whether or not reasonable accommodation was available, because such was not requested. Furthermore, the State demonstrated that reasonable accommodation was not available, as the State set forth that all voters had the same access, i.e. each registered voter was mailed a ballot and there were no in-person polling locations.<sup>14</sup> One could infer from reviewing

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<sup>11</sup> See *e.g. California Council of the Blind v. County of Alameda*, 985 F. Supp. 2d. 1229 (US Dist. Ct. N.D. CA. 2013).

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> The State demonstrated that while there were certain in-person absentee locations, these were not the “polling places” designated for the special election, as the entire election was declared to be conducted by mail.

the arguments, the only acceptable remedy to Plaintiff/Respondent would be to have an in-person election, which the State has sufficiently demonstrated it is unable to do in the instant and exigent circumstances.

A preliminary injunction can take one of two forms, either the injunction is mandatory in nature or it is prohibitory.<sup>15</sup> In granting the injunction, the superior court has ordered a mandatory injunction as it orders the Division of Elections to take action. This mandatory type of injunction, that goes “well beyond simply maintaining the status quo” is particularly disfavored.<sup>16</sup> Therefore, the court must exercise its sound judgment and exercise “extreme caution.”<sup>17</sup> The burden is heightened, as the court must find that the “facts and law clearly favor the moving party.”<sup>18</sup>

The superior court found that the election will be thrown into chaos with the injunction, but issued the mandatory injunction in spite of that fact. And in doing so, the court silenced the voices of all Alaskans who have already and will today cast their vote in a timely fashion. Not one of the more the approximately 126,000 Alaskans who had cast a vote as of June 10, 2022 was afforded the benefit of considering the initial election results before they chose which of the forty-eight people to cast a vote for. Additionally, the only possible way for the Division of Elections, while operating under the aforementioned mandatory injunction, to prevent granting such a benefit is to refrain from counting the

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<sup>15</sup> See e.g. *Disability Law Center of Alaska v. Meyer*, 484 F. Supp. 3d. 693 (D. Alaska 2020).

<sup>16</sup> *Id.* 484 F. Supp. 3d. at 699.

<sup>17</sup> *Id.*

<sup>18</sup> *Id.* (internal citations omitted).



votes beginning on June 11, 2022 which will most likely delay certification of the primary election. A certification delay will most likely lead to a delay of the special general election currently set for August 16, 2022, which will lead to delay of the certification of those results and prejudice all Alaskans by leaving our sole congressional seat empty longer than necessary.

Furthermore, the claim is barred by the doctrine of laches, as there was unreasonable delay in asserting the claim and the superior court judge abused her discretion in failing to determine the same. While this argument was rejected by this court in *State v. Arctic Village*, therein the Court found that the delay was reasonable due to the extenuating circumstances resulting from the ever-changing nature of the pandemic.<sup>19</sup> That is not the case in the instant matter, where there was public knowledge of the mail-in voting process since March 22, 2022, and the Respondent conceded below that it was aware of the issue for which it seeks relief by at least May 15, 2022. Turning to the second prong of a laches analysis, the Court must consider that the State Division of Election is the agent of the people to carry out full and fair elections. While certainly all people, regardless of disability, must be allowed access to vote, the unreasonable delay in bringing the underlying action resulting in an injunction has caused undue harm to not the division, but to the election therefore harming the general public in its entirety.

While the court recognized such significant hardships, the superior court failed to address this issue. But the underlying order itself repeatedly alludes to the fact that

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<sup>19</sup> 495 P.3d 313 (Alaska 2021).

allowing an injunction at the eleventh hour, and changing the rules of the game at the final moments of the election will cause chaos, and in turn, chill the public confidence in integrity of the election. The numerous campaigns have invested significant resources into the instant special election with the known election date of June 11, and these campaigns stand to be unduly prejudiced by any unprecedented shift in the election. Respondent being dilatory in seeking any relief, particularly without specifying the reasonable accommodation it seeks, until the eve of the election should not be rewarded with such extreme remedy. Especially where in addition to the access provided by the extent of the mailings, there are special provisions for special needs voters in Alaska. Despite the fact that delay bars the instant case from proceeding, the Division of Elections should be admonished to ensure that all voters, regardless of any disability or infirmity, are provided a fair and equal (including privacy and independence) opportunity to exercise the individual constitutional right to vote.

In addition to the foregoing, pursuant to AS 15.40.140, when a vacancy occurs a special election must occur between 60 to 90 days after the date of that vacancy. As Congressman Don Young passed away on March 18, 2022, pursuant to AS 15.40.140, the special election is required to occur on or before June 18, 2022.

#### **V. Statement of the Precise Relief Sought**

Intervenor seeks relief from this court in the form of reversing the superior court order granting a temporary restraining order and preliminary injunction. While this court should admonish the Division of Elections from engaging in any discriminatory behavior, the plaintiff below failed to meet his burden, particularly with demonstrating any necessary

reasonable accommodation to be provided under the instant circumstances. Therefore, to protect the public interest and election integrity, the Court must grant the State's Petition.

DATED this 11<sup>th</sup> day of June, 2022, at Anchorage, Alaska.

HOLMES WEDDLE & BARCOTT, P.C.  
Attorneys for Alaskans for Nick Begich



By: \_\_\_\_\_

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## **CERTIFICATE OF SERVICE**

The undersigned certifies that on this  
11<sup>th</sup> day of June, 2022, a true and  
correct copy of the foregoing document,  
printed in Times New Roman typeface  
13 point, was served via Email to:

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Holmes Weddle & Barcott, P.C.